No. 922

FILED
FEB 5 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

3244 S #2

ATLANTIC COMPANY,

Petitioner,

vs.

ATL-BRO

A. BROUGHTON, et al

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

HUGHES SPALDING,
JOHN A. SIBLEY,
SUMTER M. KELLEY,
WILLIAM K. MEADOW,
Attorneys for Petitioner.

Of Counsel:

SPALDING, SIBLEY & TROUTMAN,
434 Trust Company of Georgia Building,
Atlanta, Georgia.

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Statute Involved	3
Summary Statement	3
Reasons for Granting Writ	5

TABLE OF CASES

Abram v. San Joaquin Cotton Oil Company, 46 F. Sup. 969	12
Bofinger v. Tuyes, 120 U. S. 198	8
Brooklyn Savings Bank v. O'Neil No. 445	7
Birbalas v. Cuneo Printing Industries, Inc., 140 F. (2d) 826	16
C. M. St. P. v. Clark, 178 U. S. 353	8
Clabaugh v. Southern Wholesale Grocers Association, 181 F. 706	13
Cotton v. Weyerhauser, 147 Pac. (2d) 299	12
D. & L. Production Co. v. Cuniff, 8 Labor Cases 62312	12
David v. Atlantic Company, 69 Ga. App. 643; 26 S. E. (2d) 650	10, 14
Dize v. Maddrix, No. 554	7
Duncan v. Montgomery Ward, 42 F. Sup. 879	12
Fleming v. Warshawsky, 123 F. (2d) 622	15, 16

148602

Page

Flynn v. Railroad, 283 U. S. 53 14

Gangi v. Schulte, 53 F. Sup. 844 ..... 10, 14

Garrett v. Moore-McCormick, 317 U. S. 239 14

Glidewell v. Murray, 124 Va. 563; 98 S. E. 665 9

Globe & Rutgers v. Draper, 66 F. (2d) 985 11

Guess v. Montague, 140 F. (2d) 500 ..... 15, 16

Hecht Company v. Bowles, 321 U. S. 321 11

Kehoe v. Commissioner, 105 F. (2d) 552 8

Klotz v. Ippolito, 40 F. Sup. 442 12

Loggins v. Steel Construction Co., 129 F. (2d) 118 12

Mellon v. Goodyear, 277 U. S. 335 14

Mortenson v. Western Light & Telephone Co., 42 F. Supp. 319 ..... 11, 12

Overnight Motor Co. v. Missell, 316 U. S. 572 15

Parker v. Fulton Loan, 46 Ga. 166 13

Prudence Company In Re 98 F. (2d) 559 8

Radio Corp. v. Raythean Co., 296 U. S. 459 13

Rigopoulos v. Kervan, 140 F. (2d) 506; 47 F. Sup. 576 ..... 7, 15, 16

Rogers v. Ball, 54 Ga. 15 13

Ross v. Jones, 89 U. S. (22 Wall.) 576 11

Savage v. U. S. 92 U. S. 382 8

Scharfeld v. Richardson, 133 F. (2d) 340 11

Scripp-Howard v. Commissioner, 316 U. S. 4 11

TABLE OF CASES

	Page
St. Louis v. U. S., 92 U. S. 462	9
Swartz v. Inspiration Gold Mining Co., 15 F. Sup. 1030	11
S. S. Standard, 103 F. (2d) 437	14
Seneca Coal & Coke Co. v. Lofton, 136 F. (2d) 359	15
Sissel v. Great A & P Tea Co., 37 F. Sup. 913	15
Tennessee Coal Company v. Muscoda Local, 321 U. S. 590	15
Westmoreland Asbestos Co. v. Johns-Manville Corp., 39 F. Sup. 117	13

STATUTES AND MISCELLANEOUS *Page*

11 Am. Jur. 249 8

11 Am. Jur. 250 9

12 Am. Jur. 641 11

12 Am. Jur. 670 11

50 C. J. 857 10

59 C. J. 1038 11

15 C. J. S. 715 13

71 C. J. 933 14

Federal Employers Liability Act, 45 U.S.C.A. 51, et. seq. 14

Fair Labor Standards Act, 29 U.S.C. 201 3

Fair Labor Standards Act, Sec. 6 13

Fair Labor Standards Act, 29 U.S.C. 201, et. seq. 18

Longshoremen's & Harbor Workers Compensation Act, 33 U.S.C.A. 901, 916 ..... 9, 10

Merchant Marine Act, 46 U.S.C. 688 13

Sherman Anti-Trust Act, 15 U.S.C.A. Secs. 1-15 13

Senate Reporter No. 844, 75th Cong. First Sess. 1937 9

Wage Hour Division Annual Report, 1937-1940 7

3 Wharton's Criminal Law, Sec. 1877, p. 2079 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No.....

ATLANTIC COMPANY,

Petitioner,

vs.

A. BROUGHTON, CLIFFORD BURDETT, CLAUD COOPER, ASBURY CRITTLE, WILLIAM HANKS, JAMES JACKSON, L. P. KELLY, RUFUS McCRARY, ROY REESE, HARVEY ROLAND, FRED WHEELER CLEVELAND HARRIS, CLARENCE MALLORY, ELCO SMITH, ROY TRIBBLE, JAMES TOBIE SMITH AND WILLIE PITTS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Atlantic Company, defendant in the District

Court, appellant and cross-appellee in said Circuit Court of Appeals, respectfully prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered on December 4, 1944 in the above cause, affirming the judgment of the District Court of the United States for the Northern District of Georgia entered on March 13, 1944.

OPINIONS BELOW

The opinion of the District Court is reported in 54 Fed. Sup. 185, and is also printed in the Record (R. 170-7). The majority opinion of the Circuit Court of Appeals and the dissenting opinion of Judge Waller, as yet un-reported, are printed in the record. (R. 196-204).

BASIS OF JURISDICTION

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C. 347-a).

The opinion of the Circuit Court of Appeals for the Fifth Circuit was filed December 4, 1944; petition for rehearing was filed December 22, 1944, and was denied January 5, 1945. Application for stay of mandate pending this petition for certiorari was made and order staying the mandate for thirty days was entered January 10, 1945.

QUESTION PRESENTED

The question presented is:

When a bona fide dispute exists between employer and employees as to unpaid minimum wages and overtime compensation claimed under the Fair Labor Standards Act of 1938, (29 U.S.C. 201, et seq.) the dispute relating entirely to past transactions and involving both a question of law as to whether the work done by the employees brings them within the coverage of the Act, and also a question of fact as to the number of overtime hours worked by the employees, may the parties, in order to avoid litigation, settle their differences by a bona fide agreement of accord and satisfaction?

STATUTE INVOLVED

The statute involved is the Fair Labor Standards Act of 1938 (29 U.S.C., Sections 201 et seq.). Pertinent provisions thereof are set out in the appendix.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Respondents, employees and former employees of petitioner, made claims for unpaid minimum wages and overtime compensation under the Fair Labor Standards Act of 1938. Most of the claimants had been employed in the manufacture, handling and sale in Atlanta, Georgia of ice, some of which was used for the refrigeration of railroad cars moving in interstate commerce. When these claims were made and when they were settled, as hereinafter related, petitioner was in good faith contesting with the Administrator of the Wage-Hour Division of the Department of Labor the application and coverage of the Act to this part of its business, and the question was undetermined. (R. 109). Believing that these employees were not within the coverage of the Act, petitioner did not keep the detailed records of hours worked as provided by the Act, and when these claims were made several years later, neither employ-

er nor employees knew the number of overtime hours, but most of the employees made claim for sums far in excess of what later appeared from the best estimate that could then be made of what would have been due them if they were entitld to the benefits of the Act. (R. 109-111).

Petitioner denied all liability on the ground that the nature of the work done by the employees did not entitle them to the benefits of the Act, and further contended that even if the Act was applicable to these employees, they had not worked as many overtime hours as they claimed. (R. 99-109-111). Almost all of the employees had placed their claims in the hands of attorneys who were pressing for settlements. In an effort to avoid litigation, the claims were in good faith settled by written agreements. Where claimants were represented by counsel —and most of them were—the settlements were made through and approved in writing by the attorney. (R. 127-135). Substantial amounts were paid as the consideration for these agreements, and thirteen of the original plaintiffs in these cases were paid considerably more than was actually due them. (R. 125-126). Afterwards, the respondents repudiated their agreements, and without returning or tendering the amounts received under the settlement contracts, and with the attorney who negotiated and approved these agreements as leading counsel, instituted this litigation.

Respondents set up the agreements of accord and satisfaction as a bar to the claims. A jury trial was demanded. (R. 15-17).

The Court charged the jury that if a bona fide dispute existed between the parties and it was in good faith settled as recited in the agreements of accord and satisfaction, that these agreements would bar a recovery for the plaintiffs. (R. 160). The jury was unable to agree and a mistrial was declared. Later the

District Judge granted respondents motion for judgment, holding that regardless of the parties' desire to adjust a bona fide dispute between themselves without litigation, any settlement of a claim for unpaid minimum wages and overtime compensation under the Fair Labor Standards Act was not binding as contrary to public policy. (R. 170-177). The Circuit Court of Appeals for the Fifth Circuit affirmed this decision, Judge Waller dissenting. (R. 196).

REASONS FOR GRANTING THE WRIT

1. The Court below has decided an important question of Federal law which should be decided by this Court.

2. The writ should be allowed in order that this Court may settle a much litigated question of importance in the administration of the Fair Labor Standards Act wherein the decisions of the United States Courts of Appeal and various state courts are in hopeless conflict. The decision of the United States Circuit Court of Appeals in this case is in direct conflict with the decision of the Court of Appeals of Georgia, a state court of last resort, in the case of David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650. The several Circuit Courts of Appeal entertain views which conflict in one way or another with each other. See Fleming vs. Warshawsky (7 C.C.A.) 123 Fed. (2d) 622; Guess vs. Montague (4 C.C.A.) 140 Fed. (2d) 500; Rigopoulos vs. Kervan (2 C.C.A.) 140 Fed. (2d) 506.

The Fair Labor Standards Act has national application and is fruitful of litigation throughout the nation in both State and Federal courts, and unless this Court finally determines the public policy underlying that Act with respect to the bona fide settlement of disputes, agreements made by the parties effecting such settlements which are accepted as legal and enforceable in some jurisdictions will be held to be void and unenforceable

in other jurisdictions. Much confusion has already arisen and can only be settled by an authoritative pronouncement from this Court on the question.

3. The Court below has decided a Federal question in conflict with the applicable decisions of this Court, and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

4. A special and important reason why the writ should be granted is the uniform practice of trial courts and the Wage-Hour administrator to encourage and approve the settlement of controversies arising under the Fair Labor Standards Act. An authoritative pronouncement should be made so that this practice may be discontinued if illegal.

WHEREFORE, it is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court, and that the writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

HUGHES SPALDING,
JOHN A. SIBLEY,
SUMTER M. KELLEY,
WILLIAM K. MEADOW,
Attorneys for Petitioner.

Of Counsel:

SPALDING, SIBLEY & TROUTMAN,
434 Trust Company of Georgia Building,
Atlanta, Georgia.